

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

PHILIP BROWN,

Plaintiff,

v.

LELAND DUDEK, Acting
Commissioner of Social Security,¹

Defendant.

CV 22-140-M-DLC

ORDER

Before the Court is Plaintiff's Unopposed Motion for Attorney's Fees pursuant to 42 U.S.C. § 406(b). (Doc. 17.) Andrew T. Koenig, counsel for Plaintiff, seeks attorney's fees in the amount of \$32,637.25, representing 25 percent of Plaintiff's total back-due Title II disability benefits under the Social Security Act. (*Id.* at 2.) Defendant Office of the General Counsel, Special Assistant to the United States Attorney, has indicated that because the Commissioner is not a party to 42 U.S.C. § 406(b), it neither supports nor opposes Mr. Koenig's request for attorney's fees. (*Id.* at 17.) As of the date of this Order, Plaintiff has not filed any response.

¹ Leland Dudek became the Acting Commissioner of Social Security on February 16, 2025. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Leland Dudek King should be substituted for Kilolo Kizakaji as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

Pursuant to the fee agreement signed by Plaintiff and Mr. Koenig, Plaintiff agreed to pay Mr. Koenig 25 percent of any back-due Title II benefits awarded by the Social Security Administration (“SSA”), subject to the offset provision of the Equal Access to Justice Act (EAJA”). (Doc. 17-2 at 1.)

On April 11, 2023, this Court remanded the case for further administrative proceedings (Doc. 14), after which Plaintiff obtained a favorable decision with respect to his claim for Title II benefits. Plaintiff was represented by Mr. Koenig for the proceedings before this Court as well as the post-remand administrative proceedings. After Plaintiff’s benefits were processed, he was awarded past-due Title II benefits in the amount of \$130,549.00 for the period of March 2017 to December 2024; \$32,673.25 was withheld pending approval of attorney’s fees. On May 24, 2023, this Court awarded Mr. Koenig \$7,200.00 in attorney’s fees pursuant to the EAJA. (Doc. 16.) Therefore, pursuant to the offset provisions of the EAJA, if Mr. Koenig is awarded the fee requested in this present Motion, he will reimburse Plaintiff the \$7,200 EAJA fees previously awarded.

The Court has reviewed Mr. Koenig’s Motion and the attached exhibits and finds the request for attorney’s fees to be reasonable. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002).

Accordingly, IT IS ORDERED that Plaintiff’s Motion for Attorney Fees (Doc. 17) under 42 U.S.C. § 406(b) is GRANTED. This Order shall serve as

official approval of attorney Andrew T. Koenig's fees in the amount of \$32,637.25.

IT IS FURTHER ORDERED that, upon receipt of the \$32,673.25 and pursuant to the offset provisions of the EAJA, Mr. Koenig shall reimburse Plaintiff the \$7,200.00 in EAJA fees.

DATED this 17th day of March, 2025.



Dana L. Christensen
District Judge
United States District Court